

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JULIE DALESSIO, an individual,

Plaintiff,

v.

UNIVERSITY OF WASHINGTON, a
Washington Public Corporation; Eliza
Saunders, Director of the Office of Public
Records, in her personal and official
capacity; Alison Swenson, Compliance
Analyst, in her personal capacity; Perry
Tapper, Public Records Compliance
Officer, in his personal capacity; Andrew
Palmer, Compliance Analyst, in his
personal capacity; John or Jane Does 1-12,
in his or her personal capacity,

Defendant.

No. 2:17-cv-00642-MJP

PLAINTIFF'S RESPONSE TO
DEFENDANTS' NOTICE [REQUEST] TO
WITHDRAW PENDING MOTION FOR
PROTECTIVE ORDER [DKT. 117]

**Noted for Motion Calendar November 09,
2018**

Defendants are violating the spirit and intent of the Federal Rules of Civil Procedure and this Court's Local Court Rules by requesting this Court withdraw Defendants' [second] motion for a protective order only after Plaintiff's responded to the motion, and while Plaintiff's are working on responding to the summary judgment motion.

I. STATEMENT OF FACTS

On October 25, 2018, Defendants filed their [second] motion for a protective order from Plaintiff's second set of discovery requests. Dkt. 117. This [second] motion for a protective order was originally noted for November 02, 2018. Dkt. 117.

Then on October 31, 2018, attorneys for Defendants and attorney for Plaintiff had a discovery conference. Dkt. 125-2. In this discovery conference, Defendants attorneys Ms. Jayne Freeman and Mr. Derek Chen agreed to produce requests for production 16-23 of Plaintiff's second set of discovery because it is necessary for Plaintiff to argue against Defendants' pending motion for summary judgment. Dkt. 125.

On October 31, 2018, Defendants re-noted their motion for a protective order from November 02, 2018 to November 09, 2018. Dkt. 122.

On November 06, 2018, Plaintiff filed her response to Defendants' motion for a protective order from Plaintiff's second set of discovery. Dkt. 124. Hours later Defendants requested this Court to withdraw its [second] motion for a protective order. Dkt. 126.

II. ARGUMENT

The damage is done from the filing of this frivolous motion and it would prejudice Plaintiff and her pro bono attorney by withdrawing this motion only after her response to the motion was filed with this Court. Defendants used this [second] motion for a protective order from Plaintiff's second set of discovery to delay and multiply these proceedings, while harassing Plaintiff and her attorney with more paperwork during a pending motion for summary judgment.

As a matter of law, Defendants conduct is "inconsistent with the spirit and intent of the Local Rules" and the Federal Rules of Civil Procedure. *Bango v. Pierce County*, 3:17-CV-06002 (W. D. Wash. Aug. 03, 2018). The Federal Rules of Civil Procedure are "construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive

1 determination of every action and proceeding.” Rule 1. These Local Court Rules are meant to
2 promote “professionalism.” LCR Introduction.

3 It is neither for the “just, speedy, or inexpensive” resolution of this case, nor does it
4 promote professionalism for Defendants to vexatious file a [second] motion for a protective order
5 contemporaneously with a pending motion for summary judgment. Then Plaintiff and her
6 attorney spend many hours, time, and energy timely responding to the [second] motion for a
7 protective order, only for Defendants to attempt to withdraw it.

8 If Defendants had intended to withdraw in good faith this [second] motion for a protective
9 order, then it should have done so on October 31, 2018 – one week ago. October 31, 2018 is
10 when Defendants agreed to produce requests for production 16-23 from Plaintiff’s second set of
11 discovery requests. These are the very same discovery requests that Defendants have two
12 pending motion for protective orders from. Dkt. 111; Dkt. 117. On the same date, October 31,
13 2018, that Defendants agreed to produce requests for production 16-23, Defendants also re-noted
14 this [second] motion for a protective order for a week later. *C.f.* Dkt. 125-2; Dkt. 122.
15 Defendants had plenty of opportunities – a full week -- to withdraw this [second] motion for a
16 protective order, while also minimizing the harm to Plaintiff and her pro bono counsel.

17 If this Court is to allow Defendants to withdraw their [second] motion for a protective
18 order it cause undue harm to Plaintiff and her pro bono attorney, and reward and encourage this
19 harmful behavior by Defendants.

20 Plaintiff will be harmed if Defendants’ [second] motion for a protective order is not
21 decided on the merits. On October 31, 2018 Plaintiff’s attorney spent time, only after this motion
22 was filed, having a belated Rule 26(c) discovery conference for this motion. Plaintiff and her pro
23 bono attorney spent many hours together drafting the twelve-page response to the motion for a
24 protective order while a motion for summary judgment was pending. Plaintiff’s pro bono counsel
25 is entitled to attorney’s fees from this failed [second] motion for a protective order, pursuant to
26 Rule 37(a)(5)(B), as requested in the response to the [second] motion for a protective order.
27 Plaintiff is also harmed because if Defendants had timely sought to withdraw this [second]
28 motion for a protective order, Plaintiff would have had more time to spend responding to

Defendants' pending motion for summary judgment.

Defendants will be rewarded if this court allows Defendants to withdraw its [second] motion for a protective order. Defendants will be rewarded for their personal attacks and Plaintiff and her pro bono counsel will be punished because if the motion is withdrawn there will not be any repercussions for this misbehavior. Defendants will be rewarded by not having to pay attorney's fees for the time Plaintiff's attorney spent responding to Defendants failed [second] motion for a protective order.

"Fee shifting when the judge must rule on discovery disputes encourages their voluntary resolution and curtails the ability of litigants to use legal processes to heap detriments on adversaries (or third parties) without regard to the merits of the claims." *Rickels v. City of South Bend, Indiana*, 33 F. 3d 785, 787 (7th Cir. 1994).

III. CONCLUSION

For the reasons stated above, this Court must maintain Defendants' [second] motion for a protective order and rule upon its merits.

Respectfully submitted this 06 day of November 2018

Law Office of Joseph Thomas

/s/ Joseph Thomas
Joseph Thomas, WSBA 49532

Certificate of Service

I hereby certify that on 06 of November 2018, I filed the foregoing with the Clerk of the Court through the CM/ECF system which will automatically send electronic mail notification of such filing to the CM/ECF registered participants as identified on the Electronic Email Notice List.

/s/ Joseph Thomas
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